

<b>REPORT REFERENCE NO.</b>	DSFRA/15/28
<b>MEETING</b>	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
<b>DATE OF MEETING</b>	14 DECEMBER 2015
<b>SUBJECT OF REPORT</b>	COMMERCIAL GOVERNANCE – FURTHER DEVELOPMENTS
<b>LEAD OFFICER</b>	CHIEF FIRE OFFICER
<b>RECOMMENDATIONS</b>	<p>(a) <i>that the proposed revised governance arrangements for commercial activities (i.e by an expanded Board of Directors of Red One Ltd.), as summarised in paragraph 2.2 of this report, be approved;</i></p> <p>(b) <i>that the process for the appointment of three Authority non-executive directors to the Board, as outlined in paragraph 3.2 of this report, be approved;</i></p> <p>(c) <i>that the initial and subsequent appointment to and term of office for non-executive directors on the Board of Red One Ltd., as set out in paragraph 3.3 of the report, be approved;</i></p> <p>(d) <i>that, subject to (a) to (c) above, the Commercial Services Committee be formally dissolved upon establishment of the new, extended Board of Directors of Red One Ltd. (i.e. on 19 February 2016);</i></p> <p>(e) <i>that, upon dissolution of the Commercial Services Committee, the revisions to the Authority’s approved Financial Regulations, Scheme of Delegations and to the Terms of Reference of the Resources Committee, as set out in Section 5 of this report, be approved with the powers previously exercised by the Commercial Services Committee exercised as indicated paragraphs 5.9 and 5.10 of this report;</i></p> <p>(f) <i>that the Clerk authorised to make the consequential amendments to the constitutional governance framework documents resulting from (e) above:</i></p> <p>(g) <i>that the proposed process for the appointment, should this be required, of independent non-executive director (and Board Chairman), as indicated at Section 6 of this report, be noted.</i></p>
<b>EXECUTIVE SUMMARY</b>	This report advises on the latest developments in relation to moving towards revised governance and operating arrangements for commercial activities.
<b>RESOURCE IMPLICATIONS</b>	As indicated in the report

<b>EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)</b>	The contents of this report are considered compatible with existing equalities and human rights legislation.
<b>APPENDICES</b>	<ul style="list-style-type: none"> <li>A. Extract from the Articles of Association of Red One Ltd.</li> <li>B. Current Terms of Reference for the Commercial Services Committee</li> <li>C. List of Legislation relevant to local authority commercial activities</li> </ul>
<b>LIST OF BACKGROUND PAPERS</b>	Report DSFRA/15/17 – “Commercial Activities – Governance Options” as considered at the full Authority meeting on 29 July 2015.

## **1. BACKGROUND**

- 1.1 Against a backdrop of reducing central government funding to local authorities, this Authority took the decision in 2010 to embark on commercial trading activities, using available legislation, to provide an additional income stream to support front-line services.
- 1.2 This involved, amongst other things, establishment of a separate, arms-length company – Red One Ltd – to undertake the activities, as required by legislation. The Authority is the sole shareholder in Red One Ltd.
- 1.3 Since 2011, governance and oversight of commercial activities by the Authority has been exercised by the Commercial Services Committee. Earlier this year, however, it was felt commercial activities had reached a level of maturity sufficient to warrant revisiting existing governance arrangements with a view to securing a more business-oriented model to facilitate the maximum realisation of potential opportunities.
- 1.4 In revisiting the governance arrangements, the Authority has received two reports this year – at its July and October meetings. The latter report resulted in approval by the Authority of Tony Rowe OBE as an independent non-executive director to the Board of Red One Ltd. The Authority also confirmed that it would wish Mr. Rowe to serve, initially until May 2016, as Chairman of the Board and also to advise and inform on the eventual revised governance arrangements to be put in place (Minute DSFRA/33 refers). This report addresses developments in relation to revised governance proposals.

## **2. REVISED GOVERNANCE ARRANGEMENTS – IN SUMMARY**

- 2.1 A number of discussions have now been held with Mr. Rowe to explore and clarify Authority aspirations for commercial activity, identify how he can best assist with these, what flexibilities he would need to do so and balance these matters with the need both for an appropriate level of Authority governance and securing compliance with legislative framework applicable to local authority trading activities.
- 2.2 Following the discussions and taking account of the above factors, it is now proposed that oversight and governance of commercial activities should, in the main, be exercised by an expanded Board of Directors of Red One Ltd. initially to comprise the following:
- Tony Rowe OBE – independent non-executive director and Chairman of the Board (as appointed by the Authority at its meeting on 7 October 2015);
  - the existing three officer directors on the Board as appointed in accordance with Article 17 of the Articles of Association of Red One Ltd. – namely Jane Sherlock (Director of People and Commercial Services), Chris Thain (Commercial Services Manager) and Harvey Durrant (Head of ICT);
  - three additional non-executive directors appointed from Membership of the Fire & Rescue Authority.
- 2.3 It is also intended that, once the expanded Board of Directors of Red One Ltd. has been established, the existing Commercial Services Committee should be dissolved.

- 2.4 The remainder of this report deals with issues to be addressed to give effect to these proposals, namely:
- the process for appointing the Authority non-executive directors, conditions and initial term of appointment;
  - the subsequent term of appointment for all non-executive directors;
  - exercise of residual matters previously dealt with by the Commercial Services Committee and;
  - the process to be adopted in the event that Tony Rowe OBE resigns from his position as independent non-executive director (and Board Chair).

### **3. APPOINTMENT OF AUTHORITY NON-EXECUTIVE DIRECTORS**

3.1 The appointment, removal and remuneration of directors to the Board of Red One Ltd. (including non-executive directors) must accord with relevant provisions of the Articles of Association of Red One Ltd. These are contained in Articles 17 to 20 inclusive and are reproduced at Appendix A to this report for ease of reference. Additionally, for Authority Members appointed as non-executive directors, such an appointment is also conditional upon the Member(s) concerned continuing to be a Member of the Devon & Somerset Fire & Rescue Authority.

3.2 It is proposed that the appointment of the three Authority non-executive directors should be made by the full Authority, in accordance with Article 19. The following is proposed as the process to secure this:

1. All Authority Members will be invited to submit, by Friday 16 January 2016, an expression of interest to undertake one of the non-executive directors roles;
2. The expressions of interest submitted will be considered by the Board Chairman, who will then determine Members to hold further discussions with;
3. the Board Chairman will then make a recommendation to the Authority budget meeting on 19 February 2016 as to which three Members should be appointed.

3.3 The initial appointment for the Authority appointed non-executive directors will be from 19 February 2016 to the Annual Meeting of the Authority in 2017. Thereafter, it is proposed that there should be an annual term of office for all non-executive directors on the Board of Red One Ltd. (including the independent, non-executive director to serve as Chairman of the Board), with the Authority confirming appointments at its Annual Meeting in May each year.

3.4 The Authority is invited to consider - with a view to approving - the process for and term of office of initial appointments to the Board, as set out in paragraph 3.2 above, and the proposal for subsequent appointments and term of office as set out in paragraph 3.3.

### **4. REMUNERATION OF AUTHORITY NON-EXECUTIVE DIRECTORS**

4.1 It is intended that the three Authority-appointed non-executive directors should receive a Special Responsibility Allowance for undertaking this role. This issue is addressed in the independent review of the Members' Allowances Scheme that features elsewhere on the agenda for this meeting.

5. **OTHER CONSTITUTIONAL ISSUES INCLUDING DISSOLUTION OF COMMERCIAL SERVICES COMMITTEE AND EXERCISE OF RESIDUAL POWERS**

***Financial Regulations***

5.1 Currently, the Authority's approved Financial Regulations contain the following in relation to commercial activities:

A22. Variations in the commercial services budget (including approval to additional resources), up to and including the maximum as indicated in the Schedule to these Regulations, may be made by the Board of Red One Ltd.

A23. Variations in excess of this amount must be approved either by the Commercial Services Committee or the Authority in accordance with the limits as indicated in the Schedule to these Regulations.

A24. In relation to the variations referred to at A22 and A23 above, these are subject to any additional resources involved being matched by corresponding additional income to be generated from commercial activity.

5.2 In relation to A22 and A23, the Schedule to the Financial Regulations provides the following:

<b>COMMERCIAL ACTIVITY</b>		
	<b>Commercial Services Committee</b>	<b>Full Authority</b>
Variations on commercial services budget (including approval of additional resources, subject to these being matched by corresponding income.	£50,000	£150,000

5.3 If the revised governance proposals set out in this paper are adopted then it is proposed that, upon dissolution of the Commercial Services Committee, references in Financial Regulations to the Commercial Services Committee (as set out above) be instead replaced by references to the Resources Committee.

***Authority Scheme of Delegations***

5.4 The Authority's approved Scheme of Delegations currently provides, in relation to commercial services, for the Chief Fire Officer to enter into contracts for the provision of goods and services by Red One Ltd., subject to such contracts being within areas for which the Authority has previously approved a business case to trade commercially (such business case to duly reflect appropriate legislative requirements such as risks and opportunities presented etc.).

5.5 If the revised governance proposals set out in this paper are adopted then it is proposed that, once the revised Board of Red One Ltd. is fully constituted, then authority to enter into contracts for the provision of goods and services by Red One Ltd. should be exercised by the Board, again subject to such contracts being within areas for which the Authority has previously approved a business case to trade commercially. This will change will need to be reflected in the Authority's approved Scheme of Delegations.

5.6 This change also means that the delegation to the Commercial Services Committee **“to authorise the entering into of contracts as may be referred by the Chief Fire Officer from time to time”** (Terms of Reference, Matters with Delegated Power to Act, point 6) will no longer be applicable – this delegation being linked to the above delegation to the Chief Fire Officer to enable him to refer for Committee approval any contract where it was felt such approval would be more appropriate.

#### **Commercial Services Committee**

5.7 As previously indicated, oversight and governance of commercial services activities is currently exercised by the Commercial Services Committee. The current Terms of Reference for this Committee are produced at Appendix B for information.

5.7 If the Authority adopts the revised governance arrangements proposed in this paper, it is intended that the Commercial Services Committee should be dissolved with effect from establishment of the new, extended Board of Directors of Red One Ltd. (i.e. 19 February 2016).

5.8 The new Board will, in essence, exercise overall day-to-day control of commercial activities, with the Authority Member non-executive directors providing an appropriate level of oversight and governance for this. The Board will discharge those issues indicated as “Advisory Only” in the Commercial Services Committee Terms of Reference.

5.9 Item 6 in the Matters with Delegated Power to Act for the Commercial Services Committee is addressed at paragraph 5.6 above. This leaves the issue of those other Matters with Delegated Power to Act as currently discharged by the Committee. As the majority of these – with the exception of financial and performance monitoring - are strategic in nature and unlikely to occur with any great frequency, it is proposed that – once the Committee is dissolved – these should be exercised by the full Authority.

5.10 In terms of financial and performance monitoring, it is proposed that this should be delegated to the Resources Committee and as such the following amendment to the Terms of Reference of the Resources Committee is proposed:

***To consider quarterly financial performance reports relating to Red One Ltd in terms of expenditure on operating costs, costs recovered and profit generated and make any recommendations as appropriate to the Authority (as share-holder).***

5.11 In relation to the revisions proposed in this section, the Authority may wish to note that, as the single share-holder in Red One Ltd, it holds a reserve power (as provided for by Article 4 of the Articles of Association of Red One Ltd.) to direct, by way of special resolution, the Board of Directors of Red One Ltd. to take, or refrain from taking, specified action.

#### **6.0 PROCEDURE IN THE EVENT OF RESIGNATION OF INDEPENDENT NON EXECUTIVE DIRECTOR AND CHAIRMAN.**

6.1 The Authority will be invited to confirm/reconfirm the appointment of its non-executive directors on annual basis. In the event, however, of resignation of the independent non-executive Director and Chairman, the Authority will need to appoint a successor.

6.2 In these circumstances, it is proposed that the process previously agreed by the Authority for securing an independent non-executive director (to serve as Board Chairman) should be effected, namely that a search exercise will be undertaken followed by review of candidates by a small group of Authority Members (to be determined nearer the time), with a recommendation then being made to the full Authority.

**7. CONCLUSION**

7.1 The revised governance arrangements for commercial activities now proposed in this paper aim to strike an appropriate balance between placing the overall operation of Red One Ltd. on a more business-like footing, providing the best opportunity to maximise all potential commercial opportunities, while at the same time ensuring an appropriate level of oversight and control by the Authority.

7.2 This report has been shared with Members on the Commercial Services Committee and the proposals as set out are now commended to the Authority for approval.

**LEE HOWELL**  
**Chief Fire Officer**

**EXTRACT FROM THE ARTICLES OF ASSOCIATION OF RED ONE LTD.**

**APPOINTMENT OF DIRECTORS**

**Methods of appointing directors**

**17.**—(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

- (a) by ordinary resolution,
- (b) by a decision of the directors; or
- (c) by a notice of his appointment given in accordance with article 19.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

**Termination of director's appointment**

**18.** A person ceases to be a director as soon as—

- (a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
- (b) a bankruptcy order is made against that person;
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
- (e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- (f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms; or
- (g) notice of his removal is given in accordance with article 19.

**Appointment and removal of a director by majority of ordinary shareholders**

**19.** Any member or members holding a majority in nominal amount of the issued ordinary share capital that confers the right to attend and vote at general meetings may at any time appoint any person who is willing to act, and is permitted by law to do so, to be a director (whether as an additional director or to fill a vacancy) and may remove from office any director (no matter how he was appointed) and any alternate director. Any such appointment or removal shall be effected by notice in writing to the company by the relevant member or members. Any such appointment or removal shall take effect immediately on deposit of the notice or one such later date (if any) specified in the notice. Any removal pursuant to this article shall be without prejudice to any claim that a director may have under any contract between him and the company.



## **Directors' remuneration and expenses**

**20.**—(1) Directors may undertake any services for the company that the shareholders approve in advance in writing.

(2) Directors are only entitled to such remuneration as approved by the shareholders in advance in writing—

(a) for their services to the company as directors, and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form, and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the shareholders decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

(6) The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors,

(b) general meetings, or

(c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

**COMMERCIAL SERVICES COMMITTEE – TERMS OF REFERENCE**

*Advisory ONLY*

1. To recommend to the Authority in the first instance appropriate levels of delegation for variations on the commercial services budget (including approval to additional resources, subject to these being matched by additional income) and thereafter any revisions to levels of delegation, as may arise during the course of operations during the financial year in question in order to maximise commercial opportunities.
2. To make recommendations to the Authority on the use of any year-end trading surplus generated by commercial activities.

*Matters with Delegated Power to Act*

3. To approve both the overarching Business Case for commercial trading and, in line with the financial planning calendar, the Annual Commercial Services Business Plan.
4. In relation to the Annual Commercial Services Business Plan, to consider and approve any business case required to facilitate commercial trading in accordance with the provisions of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (“the Order”) or any subsequent amending legislation.
5. To consider and approve any trading activities of Red One Ltd within overall parameters to be set out in the approved Annual Commercial Services Business Plan and specifically to authorise investments as required up to the limits as agreed by the Authority.
6. To authorise the entering into of contracts as may be referred by the Chief Fire Officer from time to time.
7. In each case subject to legal advice and guidance that it is appropriate to do so, to establish additional trading entities (as appropriate) (NOTE: in the event of legal advice indicating otherwise, such matters will be referred to the full Authority for determination).
8. To authorise any permanent staffing increases in the authorised establishment required to deliver the Commercial Services, subject to the costs being met from income generated and in compliance with the agreed delegated levels of additional resource.
9. To monitor the financial status and performance of Red One Ltd in terms of expenditure on operating costs, costs recovered and profit generated and to take corrective action and report to the Authority on these issues as necessary.

**LIST OF LEGISLATION RELEVANT TO LOCAL AUTHORITY COMMERCIAL ACTIVITIES**

The Local Government Act 1972

The Local Authorities (Companies) Order 1995

The Local Government Act 1999

The Local Government Act 2003

The Local Authorities (Members' Allowances) (England) Regulations 2003

The Fire & Rescue Services Act 2004 (as amended)

The Companies Act 2006

The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

The Localism Act 2011

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012